



DEPT. OF TRANSPORTATION
DOCKETS

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June 26, 2002

US DOT Dockets
U.S. Department of Transportation
400 7th Street, SW, Room PL-401
Washington, D.C. 20590

Re: In the Matter of Star Transport, Inc.
Docket No. FMCSA-2002-12557-7

Dear Docket Manager:

Please insert the attached documents into Docket Number FMCSA – 20002 – 12557. These documents should be a part of the docket; however, it has come to my attention that all parties have not been properly served with each document. This submission should correct that problem.

The administrative subpoena should be attached to the Petition for Order Staying the Federal Motor Carrier's Judicial Enforcement of Its Administrative Subpoena. The June 7, 12 and 17th letters are stand-alone letters. The June 19th response from FOIA office should be attached to the June 12th letter.

If you have any questions, please call me at 843-557-0122.

Sincerely,

James E. Scapellato
The Scapellato Group, Inc.

CERTIFICATE OF SERVICE

This is to certify that on June 26, 2002, the undersigned mailed a copy of the following documents to the persons listed below:

DOCUMENTS:

1. Copy of a letter from Mr. James E. Scapellato to DOT Docket Manager dated June 26, 2002 requesting that certain documents be included in the assigned docket.
2. Copy of Subpoena and Rider from Mr. Steve Mattioli, FMCSA to Star Transport, Inc. dated June 13, 2002.
3. Copy of a letter from Mr. James E. Scapellato to Mr. Steve Mattioli dated June 17, 2002.
4. Copy of a letter from Mr. James E. Scapellato to Mr. Steve Mattioli dated June 7, 2002.
5. Copy of a letter from Mr. James E. Scapellato to the FMCSA FOIA Team dated June 12, 2002, and the response letter dated June 19, 2002.

US DOT Dockets
U.S. Department of Transportation
400 7th Street, SW, Room PL-401
Washington, D.C. 20590

Original
Federal Express

Ms. DaVina Farmer
Attorney
Federal Motor Carrier Safety Administration
Midwestern Service Center
19990 Governors Drive
Suite 210
Olympia Fields, Illinois 60461

One Copy
Regular Mail

Mr. James E. Scapellato, Esq.
Counsel for Star Transport, Inc.
The Scapellato Group, Inc.
3952 Gift Blvd.
Johns Island, SC 29455

One Copy
By Hand



James E. Scapellato
Counsel for Star Transport, Inc.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

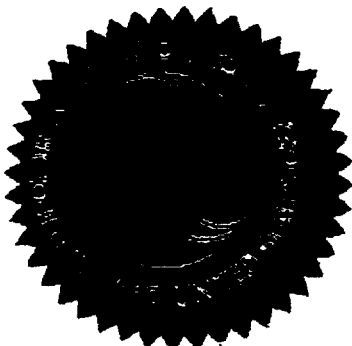
SUBPOENA

To: Star Transport, Inc.
230 Ashland Avenue, Box 909
Morton, Illinois 61550

At the instance of the Illinois Division Administrator, Federal Motor Carrier Safety Administration, and pursuant to authority granted the Secretary in 49 U.S.C. Sec. 502 as delegated to the Division Administrator, you are hereby required to appear and produce for examination and copying certain records to Steven Mattioli, Illinois Division Administrator, and/or his designee of the Department, at the premises of the Federal Motor Carrier Safety Administration, 3250 Executive Park Drive in the City of Springfield, Illinois on the 17th Day of June, 2002 at 9:00 AM information in the matter of an investigation into the safety compliance of the commercial motor carrier operations of Star Transport, Inc.

You are hereby required to produce at said time and to otherwise make available the documents, as detailed in the rider attached hereto.

Fail not at your peril.



In testimony whereof, the undersigned, an officer designated by the Associate Administrator of the Federal motor Carrier Safety Administration, has hereunto set his/her hand at Springfield, Illinois this 13th day of June, 2002.

Steve Mattioli
(Steve Mattioli, Division Administrator)

Star Transport, Inc.
U.S. DOT# 071585
230 Ashland Avenue, Box 909
Morton, Illinois 61550

SUBPOENA RIDER

Instructions: Unless otherwise stated, the time period covered by this demand is for December 1, 2001 through May 31, 2002.

1. Documents maintained by Star Transport, Inc relating to the April 5, 2002 accident, involving driver Lloyd R. McClain, tractor number 2360 and trailer number 7378. Said documents include, but are not limited to, driver records of duty status for the period March 22, 2002 through April 5, 2002, satellite data reports and/or information generated through the satellite data that specifies time, date, location and /or duty status for driver Lloyd R. McClain for the period March 22 through April 5, 2002, vehicle maintenance records for the vehicle operated by driver Lloyd R. McClain on April 5, 2002 for the period March 22, 2002 through April 5, 2002, and driver qualification file for Lloyd R. McClain.
2. A List of all drivers employed or used by Star Transport, Inc. for the past 365 days. This list shall include first name, last name, hire date and/or termination date.
3. Driver qualification files for each driver used or employed within the past 365 days. Included with each file shall be all records and information required by 49 CFR 391 including, but not limited to:
 - a. Medical exam/certificate and/or examination reports
 - b. CDL (commercial drivers license) and any other licensing information
 - c. Information received from previous employers
 - d. Driving history/records requested prior to hiring
 - e. Annual certification/list of violations by the driver and annual review of driving record
 - f. Dates hired or first date driver was used by the motor carrier
4. All dispatch records in connection with the routing and tracking of drivers.
5. All driver payroll records, timesheets and other documents that are used to determine a driver's pay.
6. All invoices, charters, memorandums of agreement with customers and/or brokers or other related documents that are used by the motor carrier to claim reimbursement for services rendered.

11. List of all vehicles. List shall identify each vehicle by vehicle-number, make, model, serial number, gross vehicle weight rating and license plate number with state identification. For each vehicle identified, all records required by section 396.3(b) shall be provided.
12. All maintenance records, road side inspection reports, repair files, records and/or documentation required under 49 CFR Part 396. Such information shall include, but is not limited to, each vehicle's periodic (annual) inspection, documentation relating to the periodic and systematic preventative maintenance routine and repairs that were performed as a result.
13. All Drivers' Daily Vehicle Inspection Reports for the past three months.
14. All records of duty status for each driver used or employed within the past 6 months. Accompanying each record of duty status shall be all supporting documents, including but not limited to trip reports, toll receipts, fuel receipts, fuel reports, charters, dispatch records, miscellaneous expense receipts, roadside inspection reports, invoices and payroll records.
15. Calendar year 2001 or the last fiscal year corporate Internal Revenue Service income tax documents.
16. Corporation registration documents and a list of corporate officers and/or owners of the company by name and title.



June 17, 2002

Mr. Steve Mattioli
Division Administrator
Federal Motor Carrier Safety Administration
3250 Executive Park Drive
Springfield, Illinois 62703-4514

Re: Star Transport, Inc.
DOT Number—071585
Administrative Subpoena

Dear Mr. Mattioli:

On June 7, 2002, you were informed in writing that Star Transport, Inc. ("Star") had retained me as counsel to represent them in matters involving the Federal Motor Carrier Safety Administration (FMCSA). In that letter, Star, by and through counsel, requested that you delay your intended compliance review scheduled for June 10th until a future date in order to permit me sufficient time to engage and obtain certain documents from Star. In addition, the FMCSA was asked to respond in writing as to the basis for its deviation from the agency's policy and practice to concentrate its resources on carriers posing the greatest risk to highway safety, particularly since Star did not fall into any risk category.

On June 7th, Mr. John Mulcare, Safety Program Manager, on behalf of Mr. Steve Mattioli, FMCSA Illinois Division Administrator, informed me by telephone that the FMCSA would not accommodate Star's request for delay, and that government investigators would be at the carrier's doorstep early Monday morning.

On the morning of June 10th, two FMCSA investigators called on Star and requested to conduct a compliance review. On advice of counsel, Star denied the investigators access to their records and equipment and advised them to call me. No representative of the FMCSA called. Nevertheless, I telephoned you in the afternoon on June 10th to discuss the basis for the government's compelling need to target Star's operation for a compliance review at this particular time. Mr. Mattioli responded that since one of Star's driver's had a fatal accident and allegedly the driver had two logbooks, he had no choice but to schedule Star for a full compliance review. Mr. Mattioli did not explain how one accident, albeit a fatal accident, was sufficient justification for the agency to abandon its policy to concentrate its resources on high-risk carriers. Mr. Mattioli informed me that an Administrative Subpoena had been prepared demanding records from Star and that he intended to sign it that day. I requested that Mr.

Mattioli wait until June 12th to sign the subpoena, and I committed to call him Wednesday afternoon once I had discussed the pending matters more fully with Star officials.

On Wednesday afternoon, June 12th, I telephoned Mr. Mattioli as agreed and left a voice message for him to return the call. Also, on June 12th, Star, through counsel, made a Freedom Of Information Act (FOIA) request for all documents in the possession of the United States Department of Transportation (DOT) and the FMCSA that directly or indirectly relate to Star.

Mr. Mattioli never returned my telephone voice message but rather on Thursday morning June 13th served Star at their principal place of business with an Administrative Subpoena accompanied by a three-page rider for an exhaustive list of records.

Clearly, the FMCSA is not affording Star their constitutionally protected rights of due process or protection from unreasonable invasion of privacy. Although, it is generally recognized that when a person engages in a pervasively regulated business like interstate trucking, he does so with knowledge that records and equipment will be subject to inspection. Nevertheless, because the government has a strong interest in regulating the safety of motor carriers to prevent accidents, and, has, in fact, pervasively regulated such activity for a long time, regulation per se does not, in-and-of-itself, constitute a reasonable search. The reasoning here is due to the FMCSA's absence of regulatory standards providing selection criteria for carriers to be inspected and parameters that detail the scope, time, duration, or magnitude of that inspection. In the absence of regulatory criteria, carriers are open to the unbridled discretion of agency officials, regardless of a carrier's safety performance and compliance record.

Accordingly, Star hereby challenges the FMCSA's Administrative Subpoena issued on June 13th on grounds that it is contrary to the constitutional safeguards contained in the Fourth Amendment to the United States Constitution. In this case, the Fourth Amendment's prohibition against unreasonable searches applies to administrative inspections of commercial property and protects the owner from unreasonable intrusion. Star deems the Administrative Subpoena unreasonable because the inspection request is not in keeping with agency's policy to concentrate its resources on high-risk problem carriers as identified by the SafeStat system (that is to say, probable cause for selection is absent: Star is currently a "D" carrier). Because of the discretionary nature of the compliance process, carriers are also subject to varying degrees of enforcement. In this case, Star is being prompted for information well beyond what is necessary to determine causative factors in the single fatal accident in question—clearly a disproportionate response when less intrusive alternatives exist. Star has offered to provide the Illinois Division Office records on the questioned accident, including records of the driver involved in the accident. Yet the FMCSA to date has ignored that offer.

Throughout this sequence of events, FMCSA officials have denied Star with adequate due process. They have failed to narrowly tailor their inquiry to be less intrusive, especially in light of Star's satisfactory safety performance. They have ignored

Star's request for delay, failed to provide records and documents on Star, and failed to explain the compelling need to target Star for a full compliance review. Obviously, there is no emergency demanding immediate access, particularly when there are 310 documented high-risk carriers in Illinois, many of which have not been subjected to a compliance review.

There is a much larger issue at stake. The temptation simply to yield to a compliance review is certainly there; Star has nothing to hide. However, to provide unconditional access is to tacitly endorse unbridled discretion and the agency's ability to enforce the non-regulatory methods of inspection. This effectively eliminates any notion of neutral criteria in compliance reviews. The burden to the motor carrier industry is enormous. Good carriers must be on constant alert and will inevitably feel targeted when problematic carriers escape government scrutiny. The economic expense to remain in a constant state of safety compliance, as determined by non-regulatory, capricious procedures will diminish their ability to effectively conduct business in a competitive environment. In short, acquiescence to this open-door policy for inspection abdicates the very right of privacy the United States Constitution protects.

In view of the above, Star respectfully requests that FMCSA issue a written response to Star's June 7th letter with supporting documentation, as well as a response to Star's June 12th FOIA request. In addition we respectfully request a Final Order for Appointment of Administrative Law Judge pursuant to 49 U.S.C. §506 (a) to afford Star the following due process rights:

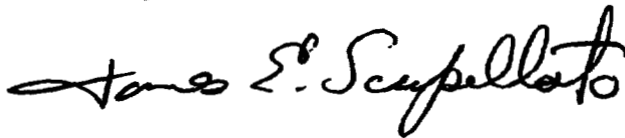
1. Pursuant to 49 U.S.C. § 506^{2 - 425}(e) the opportunity to take the depositions of Mr. Joseph M. Clapp, FMCSA Administrator, Ms. Julie Anna Cirillo, Chief Safety Officer, Mr. Steve Mattioli, Illinois Division Administrator, and the production of records and documents of Congressional testimony, enforcement policy, and other applicable documents.
2. Pursuant to 49 U.S.C. § 506(a), an administrative hearing/trial on the merits to determine, among other issues:
 - a. Whether the FMCSA's non-regulatory scheme for the identification and selection of motor carriers targeted for compliance review inspection meets the Fourth Amendment test of reasonableness?
 - b. Whether the FMCSA subpoena to Star comports with the safeguards and protection afforded commercial businesses under the Fourth Amendment, particularly in light of the agency's current policy and practice to concentrate its resource on high-risk problem carriers?
 - c. Whether the agency needs for a full compliance review inspection outweighs Star's expectation rights of privacy protected by the Fourth Amendment?

- d. Whether agency's exercise of discretion constitutes an unreasonable search especially since no neutral criteria exists and there are less intrusive alternatives available to the agency?
- e. Whether agency's policy, non-regulatory procedures or enforcement practice denies Star constitutionally protected due process rights?

Alternatively, Star petitions for a Final Order that sets forth the basis for denial of the above due process rights so that an appeal can be taken to the appropriate United States Court of Appeals.

Respectfully submitted this 17th day of June 2002.

Sincerely,



James E. Scapellato
Counsel for Star Transport
The Scapellato Group, Inc.
3952 Gift Boulevard
Johns Island, South Carolina 29455
843-557-0122 (Office)
843-557-0124 (Fax)
843-224-6376 (Cell)
Email scap@awod.com

Cc:

DaVina Farmer, FMCSA Attorney
Glen Werry, President, Star Transport, Inc.
Chuck Werry, Safety Director, Star Transport, Inc.



June 7, 2002

Mr. Steve Mattioli
Division Administrator
Federal Motor Carrier Safety Administration
3250 Executive Park Drive
Springfield, Illinois 62703-4514

Re: Star Transport, Inc.
DOT Number—071585

Dear Mr. Mattioli:

Please be advised that I have been retained by Star Transport, Inc. to represent them in matters involving the Federal Motor Carrier Safety Administration (FMCSA). I have been advised by Star that the FMCSA Illinois Division Office wants to conduct a compliance review of Star's operation because of a fatal accident involving one of its drivers. Consequently, I am requesting that you delay your intended compliance review until a future date. This will permit me sufficient time to talk with Star officials and obtain additional documentation from them. Additionally, I am requesting a written response with supporting documentation from the FMCSA that explains the reasons why FMCSA is deviating from its written policy and Congressional commitment as more fully set forth below:

It is uncontested that the United States Congress has empowered the U. S. Department of Transportation (DOT) and the FMCSA with authority and responsibility to promote the safe operation of commercial motor vehicles on our Nation's highways. To this end, the FMCSA is empowered to develop and enforce national safety standards for all commercial motor carriers, drivers, and vehicles engaged in interstate and foreign commerce. Of course, the DOT and FMCSA's number one priority is safety and as a result it is committed to achieving the highest degree of safety compliance within the motor carrier industry.

Because of limited agency resources and the rising number of existing and new carriers entering the industry, the FMCSA has chosen to target for compliance reviews those motor carriers that pose the highest risk to highway safety. In short, the FMCSA achieves efficiency and conserves resources by targeting motor carriers that have a persistent pattern of regulatory safety problems. The goal here is through strong enforcement the agency will create incentive for problem carriers to achieve voluntarily safety compliance.

As you know, to achieve the identification of high risk carriers the FMCSA has developed a computer based data system entitled "Safety Status Measurement System" (SafeStat) which gathers data from local and state police accident reports, roadside inspections, federal, state and local compliance reviews, and from data contained in the agency's Motor Carrier Information System Census. From SafeStat, compliance reviews are generated when interstate motor carriers are identified as having the greatest risk to highway safety. The FMCSA prioritizes high-risk carriers in groups of "A", "B", or "C" based on computer-generated SEA values. The "A" carriers are deemed to pose the greatest risk to highway safety.

The FMCSA Division Administrators are given a new SafeStat list every six months. Each Division Administrator makes priority assignments to safety investigators for on-site compliance reviews based primarily on the "A" and "B" rankings. The "C" carriers, those posing the lowest risk to highway safety, are scheduled for compliance reviews as time and agency resources permit. The most recent SafeStat report dated March 23, 2002, for the State of Illinois indicates that there are 23 "A's", 153 "B's", and 134 "C" carriers identified.

In light of the above, we are disturbed that it appears that your office is improperly targeting Star Transport, Inc for an in-depth compliance review contrary to your own policies and practices and commitment to the Congress to concentrate agency resources on "unfit" motor carriers. There appears to be no compelling need at this time for a full compliance review of Star, especially because of one accident, albeit, a fatal accident. Each year there are approximately 5,000 large truck accidents occurring across the country. It is not, however, the policy or practice of the FMCSA to do a full compliance review on each motor carrier involved in fatal accidents or for the agency to abandon its SafeStat data for that reason alone.

Star's SafeStat rating is "D" and, therefore, it has not been identified as a high-risk carrier. Star's overall road performance in relationship to the miles driven ranks it among the Nation's safest carriers. From May 2001 to April 2002, Star's vehicles traveled approximately 140 million miles and were involved in only 112 recordable accidents. Star's accident rate is 0.79 per million vehicle miles, which is 50 percent below the 1.5 per million-vehicle miles benchmark used by the FMCSA in determining the acceptability of the accident safety rating factor. Star's road performance has improved continuously over several years.

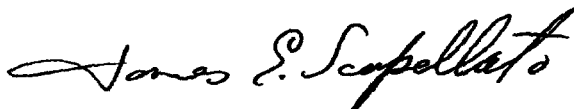
Star Transport certainly does not take likely any accident, especially fatal accidents nor does it underestimate the significance of one fatal accident. Star does not believe, however, that such random events should warrant a full investigation that could take several days to complete, usually involving more than one investigator, and is very demanding and disruptive to the normal operation of the carrier. The preponderance of evidence contained in the FMCSA files clearly indicates that Star is a safe and compliant motor carrier as evidenced by its strong commitment to safety.

From May 2001 to April 2002, Star's drivers and vehicles were subject to 1073 driver inspections and 694 roadside inspections resulting in an out-of-service rate of 7 percent driver and 10 percent vehicle respectively, which is well below the national averages for these categories. Star has an aggressive safety program with sufficient safety management controls in place to achieve a high degree of sustained safety compliance. Star operates new equipment (2-years old) that is properly maintained and serviced. Since 1994, Star has maintained a satisfactory safety rating. Although Star's accident SAE value is 92.85, this in of its self would not justify the agency using scarce resources to complete a full in depth investigation of Star when there are 310 identified and documented high risk carriers operating in Illinois many who have not even been called upon by the Division Office.

Accordingly, Star Transport believes its request to delay the agency's compliance review is reasonable in light of the above and looks forward to receiving the agency's response with supporting documentation. In the event that the FMCSA has received a non-frivolous complaint, please treat this request also as a freedom of information act request and provide a redacted copy of the complaint with your response.

We sincerely appreciate your understanding and cooperation in this matter.

Sincerely,



James E. Scapellato
The Scapellato Group, Inc.

cc: Mr. Glen Werry, Star Transport, Inc.
Mr. Charles Werry, Star Transport, Inc.



June 12, 2002

Federal Motor Carrier Safety Administration
Attn: FOIA Team
400 7th Street, S.W.
Room 8207
Washington, D.C. 20590

Re: Star Transport, Inc.
DOT Number—071585

Dear FOIA Team:

Please be advised that I have been retained as counsel by Star Transport, Inc. to represent them in matters involving the Federal Motor Carrier Safety Administration.

Pursuant to the Freedom of Information Act (5 U.S.C. 552) and on behalf of Star Transport, I make this FOIA request for all documents in the possession of the United States Department of Transportation and the Federal Motor Carrier Safety Administration (FMCSA) that directly or indirectly relate to Star Transport, Inc.

Please treat this letter as a request for documents, email messages, and other information for all levels of the operation, including DOT and FMCSA headquarters offices, the Midwestern Resource Center, and the Illinois Division Office of the FMCSA.

Furthermore, on information and belief, the Illinois Division Office has in its possession certain Star Transport driver's records of duty status and other information for the period on or about April 5, 2002. A demand is hereby made for the return of Star's records.

We sincerely appreciate expedited handling of this request.

Sincerely,

James E. Scapellato
The Scapellato Group, Inc.



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

400 - Seventh St., SW
Washington, DC 20590

June 19, 2002

FOIA Control No: 2002-0512

MR. JAMES E. SCAPELLATO
THE SCAPELLATO GROUP, INC.
3952 GIFT BLVD
JOHNS ISLAND SC 29455

Dear MR. SCAPELLATO:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request dated 6/12/2002, requesting a copy of all documents directly or indirectly related to Star Transport, Inc.

The Federal Motor Carrier Safety Administration has a large backlog of initial requests. Personnel resources are limited, and a search to determine whether there are records within the scope of your request has not yet been conducted. If documents are located, they will be processed as quickly as possible.

We regret the necessity of any delay, but assure you that your request will be processed as soon as possible. Your patience is appreciated.

If you have any questions about your request, please refer to the FOIA Control Number indicated above in your correspondence.

Sincerely,

Kathy Ray
FOIA Officer